UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
POUGHKEEPSIE DIVISION

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In re:	
	Chapter 7
DONNA MARIE FRALEIGH,	Case No: 10-36282(cgm)
Debtor.	

---X

In re:	Adversary Proceeding
BRIAN FRALEIGH,	
Plaintiff,	Case No.: 10-09091(CGM)
-against-	
DONNA MARIE FRALEIGH,	
Defendant.	

---X

NOTICE OF MOTION BY A NON-PARTY WITNESS SEEKING TO QUASH SUPBOENA AND FOR A PROTECTIVE ORDER PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9016 AND FEDERAL RULE OF CIVIL PROCEDURE 45(b)(1) AND (b)(4).

PLEASE TAKE NOTICE upon the motion of BRIAN JURAN, a non-party witness who has been served with a subpoena in this action, by his attorney, RICHARD SCOTT ZIRT, ESQ., the undersigned will move this Court before the HONORABLE CECALIA G. MORRIS, U.S. Bankruptcy Judge, at the U.S. Bankruptcy Courthouse, 355 Main Street, Poughkeepsie, New York on the 20th day of March, 2012, at 9:30am, or as soon thereafter as counsel can be heard for an Order pursuant to Fed. R. B. Pro. 9016 and Fed.R.Civ Pro. 45(b)(1) and (b)(4), quashing the subpoena served upon Brian Juran upon the ground that it seeks the production of information in violation of the attorney/client privilege; and that it would constitute an undue burden upon the witness to appear in Poughkeepsie, New York; together with such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that responsive papers, if any, should be filed with the Court and personally served upon the undersigned, no later than three (3) business days prior to the return date set forth hereinabove.

Dated: Monticello, New York
March 2, 2012

LAW OFFICE OF RICHARD SCOTT ZIRT

_/S/ Richard Scott Zirt____________
RICHARD SCOTT ZIRT, ESQ.
Attorney for the Brian Juran
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P.O. Box 1315
Monticello, NY 12701
(845) 794-5928

UNITED STATES BANKRUPTCY COURT
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In re:

Chapter 7

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-against-

DONNA MARIE FRALEIGH,
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MOTION OF NONPARTY TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER

BRIAN JURAN, a non-party to this action and the subject of a subpoena served upon him hereby respectfully requests that this Court issue an Order quashing and vacating the subpoena served upon him by Andrea B. Malin, Esq., adversary plaintiff Brian Fraleigh's counsel.

As grounds therefor, the Movant states as follows:

1. On or about February 21, 2012, Plaintiff Brian Fraleigh, through counsel, served non-party movant a subpoena a true copy of which is attached hereto as **Exhibit "A".**

2. Movant currently resides in Ulster County, NY and maintains his office for the practice of law at 654 Aaron Court, Kingston, NY 12401. The Affidavit of Brian Juran, Esq. is attached hereto as **Exhibit "B".** Movant Brian Juran hereby resists

the subpoena based upon a claim of attorney/client privilege as to his testimony and to the production portion of the subpoena based upon the fact that no such documents exist.

3. F.R.B.P 9016 states that Federal Rule of Civil Procedure 45 Applies to this action. F.R.Civ.Pro. 45(b)(1) states that "If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served upon each party". No such notice was ever filed upon the ECF system as of the date of the making of this application.

4. F.R.Civ.Pro. 45(b)(4), states "Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. A statement must be certified by the server. No such proof of service of the subpoena was filed upon ECF, demonstrating to all parties that the subpoena was served.

5. The face of the subpoena sets forth as follows:

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

> "Contracts, invoices, cancelled checks, receipts, or other documents demonstrating work performed for you and/or service provided to you by either Christopher Sekul or Donna Fraleigh or any other businesses owned by Christopher Sekul or Donna Fraleigh".

6. Not one single item which has been requested in the foregoing paragraph exists. An entity may not be compelled to produce something that does not exist. In re Haney, 42 C.B.C.2nd 1621, 238 B.R. 430 (Bankr. E.D. Ark. 1999). Neither Christopher Sekul nor Donna Fraleigh ever provided any services whatsoever to the movant, nor did any businesses owned by Sekul or Fraleigh ever provide any services to the movant. There are no such contracts. There are no such invoices. There are no cancelled checks, receipts or other documents demonstrating work performed for the movant, nor were there any services provided to the movant by either Sekul or Fraleigh. As the Court is well aware, the movant is a local bankruptcy attorney who is personally familiar to the Court. He filed a Chapter 7 Bankruptcy on behalf of Donna Fraleigh on April 30, 2010, which case was assigned case no. 10-36282(cgm). Brian Juran, Esq. and Donna Fraleigh are attorney and client and, as such, they share an attorney/client privilege which privilege Mr. Juran must assert in the absence of a waiver thereof by Ms. Fraleigh.

7. In order to be relevant to these proceedings, any requested testimony from attorney Juran, vis-a-vis his dealings with Donna Fraleigh, would certainly concern his representation of her as her Bankruptcy Attorney. Mr. Juran did not know Ms. Fraleigh prior to her contacting him to represent her for a Chapter 7 Bankruptcy filing. Thus any communications which took place between Mr. Juran and Donna Fraleigh were both privileged and confidential because they occurred within the attorney/client relationship and are thus protected by State and Federal law as privileged and confidential communications. Because Brian

Juran had no other dealings with Donna Fraleigh, outside of his representation of her for the filing of a simple Chapter 7 no-asset bankruptcy, there were no communications outside of the attorney client privilege.

THE SUBPOENA POSES AN UNDUE BURDEN IN VIOLATION OF FEDERAL RULES OF CIVIL PROCEDURE SECTION 45

8. As a general rule, the Federal Rules of Civil Procedure protects non-parties from an "undue burden" in complying with subpoenas. See, Fed.R.Civ.P. §45.

9. Pursuant to the Federal Rules, the court may permit a party to obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party...."Fed.R.Civ.P. §26(b)(1). However, such requests are subject to the limitation that no request may impose an undue burden upon a non-party. Fed.R.Civ.P. §45; Jackson v. AFSCME Local 196, 246 F.R.D. 410, 410 (D. Conn. 2007); accord, Filippi v. Elmont Union Free School District Board of Education, 2011 U.S. Dist. LEXIS 102310(S.D.N.Y. 2011). As can be seen from the Affidavit of Brian Juran, it would impose an extreme undue physical hardship for him to personally appear at the Poughkeepsie Bankruptcy Court.

10. If the Plaintiff wanted to obtain documents from the movant than the Plaintiff should have requested the desired information during the discovery process. As far as the documents requested upon the face of the subpoena, neither Sekul nor Fraleigh ever performed any work or services for Mr. Juran and thus there are no documents or other materials that satisfy the document request contained upon the subpoena.

11. The Court's evaluation of undue burden requires weighing the burden to the subpoenaed party against the value of information to the serving party. Upon a claim by any party that such demand imposes an undue burden, a court will weigh "such factors as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents or documents are described and the burden imposed." United States v. International Business Machines Corp., 83 F.R.D. 97, 104 S.D.N.Y. 1979).

CONCLUSION

. WHEREFORE, the movant respectfully requests this Court grant the Movant's objections raised herein, and issue an Order quashing the subpoena, and/or find the subpoena to be in violation of F.R.B.P 9016 and Fed. R.Civ. Pro 45(b)(1) and (b)(4) and not require the witness to physically travel to the U.S. Bankruptcy Court in Poughkeepsie, NY, and enter a protective order consistent with the relief set forth above and/or properly limit its scope to non-confidential materials, or, in the alternative, if this court does not issue an Order quashing the subpoena, and does order Mr. Juran to testify in this adversary proceeding then Mr. Juran asks this court to allow him to testify by telephone from his offices in Kingston, NY, as he continues to suffer from debilitating neurological medical difficulties which have, for the past few years, rendered him unable to travel to and from the Poughkeepsie Bankruptcy Court, and for such other, further and different relief which, as to the Court, may seem just and proper.

Dated: Monticello, New York
March 2, 2012

RICHARD SCOTT ZIRT, ESQ.

By:_/S/ Richard Scott Zirt_____
RICHARD SCOTT ZIRT, ESQ.
Attorney for non-party Movant Brian Juran
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